

Internal Revenue Service

Number: **201323013**
Release Date: 6/7/2013

1362.01-03, 1362.04-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B02
PLR-147726-12
Date:
January 25, 2013

X =

Trust =

Individual =

State =

Date 1 =

Date 2 =

Dear

This letter responds to a letter dated November 1, 2012, submitted on behalf of X by its authorized representatives requesting a ruling under §§ 1362(b)(5) and 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated in State on Date 1. Since Date 1, X has had two shareholders, Trust and Individual. X's officers intended that X elect S corporation treatment effective Date 1; however, a Form 2553, Election by a Small Business Corporation, incorrectly identified the effective date of the election as Date 2 and incorrectly reported the percentage of ownership that Trust and Individual held in X. In addition, an individual who was not an authorized signatory of Trust signed the Form 2553 on behalf of Trust, therefore making the election ineffective. Also, X represents that Trust qualifies as an electing small business trust ("ESBT") within the meaning of § 1361(e). However, no ESBT election was properly filed for Trust.

X represents that it meets all of the requirements to be a small business corporation under § 1361(b) effective Date 1. Further, X represents that its failure to file an ESBT election was inadvertent. X and its shareholders agree to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary.

Section 1361(a)(1) defines an “S corporation” as a small business corporation for which an election under § 1362(a) is in effect for the taxable year.

Section 1361(b)(1)(B) provides that the term “small business corporation” means a domestic corporation which is not an ineligible corporation and which does not have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1362(a)(1) provides that except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation. Section 1362(b)(1) provides that an election under § 1362(a) may be made by a small business corporation for any taxable year (A) at any time during the preceding taxable year, or (b) at any time during the taxable year and on or before the 15th day of the third month of the taxable year.

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3), after the date prescribed by § 1362(b) for making such election for such taxable year or no such election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make the election, the Secretary may treat such an election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) by any corporation was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, (2) the Secretary determines that the circumstances resulting in such ineffectiveness were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based on the facts submitted and representations made, we conclude that X established reasonable cause for failing to make a timely election to be an S corporation

effective Date 1. Thus we conclude that X is eligible for relief under § 1362(b)(5). Accordingly, if X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective Date 1 within 120 days following the date of this letter, then such election will be treated as timely made. A copy of this letter should be attached to the Form 2553.

X failed to timely file an election to be treated as an S corporation effective Date 1. Had X filed the election, it would have been ineffective because Trust was an ineligible shareholder on Date 1. Based solely on the facts submitted and representations made, we conclude that X's election to be treated as an S corporation effective Date 1 would have been ineffective and conclude that the ineffectiveness would have been inadvertent within the meaning of § 1362(f). Under the provisions of § 1362(f), X will be treated as an S corporation effective Date 1, and thereafter, provided that X's S corporation is not otherwise terminated under § 1362(d).

This ruling is contingent on X and its shareholders filing their federal income tax returns consistent with X being an S corporation. This ruling is also contingent on the trustee of Trust filing an ESBT election effective Date 1, with the appropriate service center. The ESBT election must be filed within 120 days following the date of this letter. A copy of this letter should be attached to the ESBT election. If X or its shareholders fail to treat themselves as described above, this ruling shall be null and void.

Except for the specific rulings above, we express no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express or imply no opinion as to whether X otherwise qualifies as a subchapter S corporation under § 1361 or the qualification of Trust as an ESBT.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the code provides that it may not be used or cited as precedent. Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representatives.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purpose